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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR ALAN MAGANA,

Defendant and Appellant.

F066693

(Super. Ct. No. BF143560A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Kane, Acting P.J., Detjen, J. and Peña, J.

## INTRODUCTION

On August 20, 2012, a criminal complaint was filed charging appellant, Edgar Alan Magana, with operating a chop shop (Veh. Code, § 10801, count 1), two counts of unlawfully receiving a motor vehicle knowing it had been stolen (Pen. Code, § 496d, subd. (a), counts 2 & 3),<sup>1</sup> being a felon in possession of a firearm (§ 29800, subd. (a)(1), count 4), and unlawfully resisting, delaying, or obstructing a peace officer (§ 148, subd. (a)(1), count 5). On October 12, 2012, appellant entered into a plea agreement.

On October 12, 2012, appellant initialed and executed a felony advisement of rights, waiver, and plea form acknowledging and waiving his constitutional rights pursuant to *Boykin/Tahl*.<sup>2</sup> Appellant also acknowledged the consequences of his plea. In exchange for appellant's admission of count 1, operating a chop shop, and count 4, being a felon in possession of a firearm, the remaining allegations would be dismissed. Appellant would be incarcerated for no more than a year and placed on felony probation.

Appellant initialed a paragraph entitled "ALIEN STATUS" that advised appellant that his "guilty or no contest plea will result in my deportation, exclusion from admission to the United States, and denial of naturalization under the laws of the United States.

**Deportation is mandatory for some offenses. I have fully discussed this matter with my attorney and understand the serious immigration consequences of my plea."**

(Emphasis in the original.) The form was translated into Spanish for appellant by a certified Spanish interpreter who certified that appellant understood the contents of the form.

During the change of plea hearing, appellant acknowledged that he initialed and signed the plea form. Appellant also acknowledged that he went over his rights with his attorney, understood his rights, had no questions about his rights, and waived his rights.

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<sup>1</sup> Unless otherwise designated, all statutory references are to the Penal Code.

<sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

Counsel for both sides stipulated to a factual basis for the plea. When the court asked appellant if he had any questions before the court took his plea, appellant asked if the charges would be lowered to misdemeanors. The court replied they were felonies. Appellant said to the court, “God bless you.” Appellant pled no contest to counts 1 and 4. The court granted the People’s motion to dismiss the remaining allegations.

On December 19, 2012, appellant filed a motion to withdraw his plea. Appellant asserted that his trial counsel was ineffective for failing to advise him of the immigration consequences of his plea. Appellant filed a declaration claiming that his attorney did not advise him of the consequences of his plea. Appellant stated that had he known there were ways he could have pled to preserve his right to avoid deportation, he would not have entered his change of plea.

On February 7, 2013, the trial court denied appellant’s motion to withdraw his plea. Appellant’s counsel submitted the matter on appellant’s pleadings and declaration. The court denied appellant’s motion to withdraw his plea. Defense counsel argued that there was no way for appellant to comply with the terms of probation if he was going to be deported.

Appellant obtained a certificate of probable cause. Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

## **FACTS**

The following evidence was presented at the preliminary hearing. On August 16, 2012, Brett McAndrews was working as an investigator for the Department of Motor Vehicles (DMV). McAndrews was part of a team of investigators that included Eric Light, Andres Hernandez, Mark Bodes, Kevin Buchanan, and Tom Wilson. Agents Jose Rodriguez, Anthony Trunk, and Bernie Madrid from Homeland Security were also involved in the investigation. The investigators went to an address on Meeks Avenue in Kern County to serve a search warrant. The address was a single family home with a

couple of outbuildings in the back of the property. When the investigators saw a subject in the backyard, they identified themselves as police and ordered him to get down. He did not comply with their orders.

The man, appellant, stepped down from a fence to the top of a chicken coop and would not climb down even though the investigators were yelling commands to him to get down. Investigator Buchanan pepper sprayed appellant and he eventually climbed down from the chicken coop. McAndrews tackled him, handcuffed him, and arrested him. He was searched by Agent Madrid.

There was a black, four-door Mercedes sedan parked in front of the house at the curb. There were tools in the trunk of the car, clothes in the car, and a backpack in the back seat. Later McAndrews learned there was a handgun located behind the stereo and some vehicle titles that did not belong to the car. The gun was a .45-caliber handgun.

Charlie McMichael, an investigator with the California Highway Patrol (CHP), testified that he was part of the investigation team sent to appellant's residence. McMichael was investigating stolen Vehicle Identification Number (VIN) switched vehicles. McMichael explained there was a tow truck in the front driveway. Directly behind it there was a Toyota Tacoma pickup truck with paper plates. The front windshield of the pickup truck had been removed and was in the bed of the pickup truck. The truck had no other damage. There was no damage at all to the windshield. The windshield was likely removed to change the VIN plates.

A search of the pickup truck turned up several tools used to remove the windshield and two garbage bags in the back seat of the truck. There was a California license plate and several pieces of paperwork in the bags. The paperwork was in the name of Jerry Miller. After searching the address on Meeks Avenue, the investigators proceeded to an address on Trabuco Canyon Road in Kern County. McMichael questioned a young woman named Anna Celaya who indicated she lived at that location. Celaya said she was

appellant's girlfriend and lived with him for about a year. McMichael obtained Celaya's consent to search the residence at Trabuco Canyon Road.

Searching a detached garage, investigators found a white Mercedes and a white BMW. Celaya said appellant provided her with the BMW for her to drive about six months earlier. Celaya used it to transport her children to and from school and to go to the grocery store. The Mercedes had been brought to the home about two weeks earlier and Celaya had driven it once just to park it. Celaya said that appellant's occupation had something to do with automobiles. Appellant would travel down to a body shop in Los Angeles every day. Appellant would leave late in the day and return between 1:00 a.m. and 5:00 a.m.

The Mercedes was registered to Francisco Ayala. The Mercedes corporation, however, informed McMichael that the Mercedes was a "title wash stolen vehicle" that they had been searching for. A title wash occurs when one removes the lienholder of the car from the title documents. Mercedes was still the legal lienholder and owner of the car. Francisco Ayala did not appear to be a real person. Appellant was later questioned. He could answer questions in both Spanish and English.<sup>3</sup>

Officer Joseph Chavez of the CHP had over 12 years of experience investigating vehicle thefts and had taken specialized classes and training on the ranges of vehicle theft, VIN restoration of number, and identification of parts. In a chop shop, vehicles are either dismantled or their VIN numbers are altered. Such shops use common tools such

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<sup>3</sup> A briefcase belonging to appellant was also seized at the Trabuco Canyon Road residence. According to the probation officer's report, the briefcase contained several pieces of paper, documents with various VIN numbers, and two vehicles with incorrect VINs on them. Appellant would obtain VIN numbers of vehicles he intended to steal. Using a key code, he would have duplicate keys made. Appellant would then place counterfeit indicia form VIN numbers from vehicles in junk yards from other states. The vehicles were then sold to unsuspecting, innocent purchasers. Also according to the probation officer's report, during the initial investigation more than 60 vehicles were identified and recovered. Over several months, the list of stolen and VIN switched vehicles rose to over 200 vehicles.

as VIN plates, rivets and phony labels, and special tools such as modified pliers and modified screwdrivers.

At the Meeks Avenue residence, there was a toolbox that contained a bag with rivets and a piece of paper where a VIN plate had been painted using the paper as a background. The paper, rivets, and tools were found outside the door of the Toyota pickup truck.

### **APPELLATE COURT REVIEW**

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on August 14, 2013, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

### **DISPOSITION**

The judgment is affirmed.